



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/08654/2016

THE IMMIGRATION ACTS

Heard at Field House

On 22 June 2017

**Decision & Reasons
Promulgated
On 11 July 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

**SP
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr T. Uppal, Solicitor, Glen Solicitors

For the Respondent: Mr S. Kotas, Home Office Presenting Officer

Anonymity

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

DECISION AND REASONS

1. The appellant is a citizen of Nepal born on [] 1990 who entered the UK on 8 January 2010 as a Tier 4 General Student. On 25 January 2016 she applied for asylum. The application was refused on 22 July 2016. The appellant appealed to the First-tier Tribunal where her appeal was heard by Judge Mitchell. In a decision promulgated on 29 March 2017, following a hearing on 17 March 2017, her appeal was dismissed. She now appeals against that decision.
2. The background to this appeal is that on 5 July 2009 the appellant married a national of Nepal and travelled with him, in January 2010, to the UK. The appellant was physically abused by her husband. In May 2015 she left him and contacted the police. He was arrested and pleaded guilty to assault. He left the UK, returning to Nepal, in August 2015.
3. The appellant claims that after she left her husband he continued to harass her, and that this continued after he left the UK. She claims that her husband and his family have threatened to harm her and her family in Nepal and that if she is returned to Nepal she will be at real risk of being killed by her husband.
4. In a letter setting out the reasons for refusal dated 22 July 2016, the respondent rejected the appellant's asylum claim on the basis that there is sufficiency of protection in Nepal for victims of domestic violence and/or that she could reasonably relocate within Nepal to avoid any risk from her husband.
5. The respondent also considered whether removing the appellant from the UK would be contrary to Article 8 ECHR. It was found that she would not face significant obstacles integrating into Nepal and therefore Paragraph 276ADE(1)(iv) of the Immigration Rules was not satisfied. Nor did the respondent consider there to be exceptional circumstances that would warrant a grant of leave outside the Rules.
6. The respondent's reasons for refusal letter also considered whether removing the appellant would breach Articles 3 or 8 of the ECHR because she had claimed to have attempted suicide. The respondent, applying J v SSHD [2005] EWCA Civ 629, concluded there would not be a breach of either Article 3 or Article 8.
7. The appellant lodged an appeal against the respondent's decision. The grounds of appeal to the First-tier Tribunal submit that the respondent failed to properly consider the risk the appellant would face in Nepal. No argument was advanced in the grounds of appeal to the First-tier Tribunal that removing the appellant from the UK would breach Article 8 ECHR because of family or private life in the UK; or that her removal would breach Article 3 or Article 8 ECHR because of the risk she might commit suicide. Paragraph 9 of the grounds of appeal states: "*The appellant intends to particularise each of the above grounds and further grounds at the hearing of this appeal.*"

Decision of the First-tier Tribunal

8. The judge refused to consider whether removing the appellant from the UK would breach her human rights or place her at risk under Article 15(c) of the Qualification Directive. At paragraph 4 he stated:

“The grounds of appeal that have been produced by the representatives did not make reference to either article 8 ECHR or article 15(c) of the qualification directive, both of which [sic] referred to at some length in the skeleton argument. No appropriate notice had been served. The skeleton argument had only been received by the Tribunal on 15 March 2017. There had not been any application to vary the grounds of the appeal. Ms Hitschmann on behalf of the Secretary of State objected to the inclusion of those two matters in this appeal. I therefore do not consider that either of these matters can be considered in this appeal.”

9. The judge did not accept that the appellant and her family in Nepal, are, or have been, subject to ongoing threats from her husband since he left the UK and on this basis rejected her asylum claim. He concluded at paragraph 35 that:

“The appellant has clearly fabricated the claim that her ex husband is continuing to threaten her. She gave evidence that he has remarried or is now living with another woman. He appears to have moved on in his life. They are now leading entirely separate lives. For the reasons set out above I conclude that the appellant has embellished and that her claim that the husband is still interested in threatening or harming her or his family is also interested in threatening or harming her or her family is not credible. I therefore conclude that the appellant has not shown that she has any well founded fear of return to Nepal.”

10. Having made this finding, the judge stated, at paragraph 36, that it was not necessary to consider whether the appellant could be a member of a particular social group, the viability of internal relocation in Nepal or whether there is sufficiency of protection.

Grounds of Appeal

11. A wide range of arguments are made in the grounds of appeal.
12. The first ground of appeal argues that the judge elevated the standard of proof and misapplied the case of Tanveer by focussing disproportionately on the appellant’s evidence regarding her husband’s threats and that the judge adopted a “tenacious and flawed” approach.
13. The second ground of appeal argues that the judge erred by failing to consider sufficiency of protection and internal relocation, on the basis that the appellant would still be at risk even if there had been no threats from her husband since he left the UK. The grounds submit that the judge failed

to consider the objective country information concerning the risk to single divorced females in Nepal from their former husbands and families.

14. Thirdly, the grounds challenges the judge's evaluation of the evidence that lead him to conclude that the appellant fabricated the account of her husband continuing to threaten her. These aspects of the decision are described as contradictory and problematic.
15. Fourthly, the grounds submit that the judge erred by refusing to consider Article 8 ECHR and Article 15(c) of the Qualification Directive. It is argued that the appellant was entitled to raise these claims as the grounds before the First-tier Tribunal stated that "further grounds" would be particularised at the hearing, submissions regarding Article 8 and Article 15(c) were included in the skeleton argument, and the witness evidence dealt with Article 8 issues. The decision to refuse to consider these areas is described in the grounds as a procedural irregularity and contrary to the spirit of the Tribunal Procedure Rules.
16. Fifthly, it is argued that the judge erred by stating he was unclear about aspects of the appellant's account without giving her the opportunity to clarify the points.
17. Sixthly, the grounds maintain that the judge erred by taking into consideration 28 "Viber messages" the appellant claimed to have received from her husband that were deleted from her telephone as these were not relied upon by the appellant and only came to light in cross examination.

Adjournment

18. Shortly before the hearing, the appellant's former solicitors ceased acting for her. She applied for an adjournment which was refused. The application to adjourn was renewed before me.
19. Mr Uppal, in support of his application to adjourn, stated that he had been given incomplete documentation by the previous solicitors and therefore his preparation for the hearing was incomplete.
20. I refused the application but agreed to the appeal being heard last on my list, thereby giving Mr Uppal several hours to prepare. In addition, I asked Mr Uppal to identify any documents he was missing in order that I could provide them from the court file.
21. My reason for refusing the application, which I explained to the parties, is that Mr Uppal would have time to consider any papers he had not seen as his appeal would be last on my list. The matter before me concerns an error of law, which requires a focus on relatively narrow issues, and there is no reason Mr Uppal has not been able, based on the papers he did receive from the previous solicitors, to prepare for the error of law hearing. I accepted that he might be in difficulty if a full rehearing is required and I

told the parties that if I were to decide to remake the appeal, I would adjourn if appropriate to enable Mr Uppal further time to prepare.

22. Moreover, the decision to change legal representation was made by the appellant (due to the cost). That is a matter for her and is not a good basis to delay a hearing.
23. In all the circumstances, and having regard to the overriding objective in the Procedure Rules, I was satisfied that it was fair and just to proceed with the error of law hearing.

Submissions

24. The focus of Mr Uppal's argument was on the failure of the judge to consider the appellant's claim under Article 8 ECHR. He argued that the appellant did not need, in the grounds accompanying Form IAFT-5, to specifically refer to Article 8. This, he maintained, was covered by the grounds stating that further grounds would be particularised at the hearing. He submitted that the appellant had a strong case under Article 8, having been the victim of domestic violence and facing serious hardship on return. He also noted that the appellant's partner is a British national.
25. Mr Uppal also argued that the judge's assessment of the appellant's credibility was flawed. He observed that it is not uncommon for a violent partner to continue harassing someone after they separate and the judge has not properly reasoned the rejection of the appellant's account.
26. He also questioned some of the judge's adverse findings about the appellant. The judge had drawn an adverse inference from apparent discrepancies between the appellant and her partner about text messages. He argued that the judge had not dealt with the appellant's explanation. Nor had the judge recognised, when holding against the appellant that messages had been deleted, that it is common to delete messages. Mr Uppal noted that the appellant had explained in her statement why messages were deleted.
27. Mr Uppal also highlighted the adverse finding about the email address used to contact the police in Nepal, noting that the judge had never put his concern to her. Had he done so, should could have explained. Likewise, the appellant was never given an opportunity to respond to the judge's apparent concern about the signatures of her father and brother.
28. Mr Kotas submitted, in response, that Article 8 had not been raised by the appellant other than in the skeleton argument. He commented that the appellant's and her partner's witness statements did not address issues relevant to Article 8. There is no point anywhere in the papers submitted by the appellant to address whether she satisfies the Immigration Rules. He also added that her relationship with her partner post-dated the

Secretary of State's refusal letter, so the Secretary of State had no notice of this until the hearing.

29. Mr Kotas added that it was unclear why Article 15(c) of the Qualification Directive was raised in the grounds as it was irrelevant to the appeal.

30. He described the remainder of the grounds as a tedious litany of forensic criticisms. The appeal turned on credibility and in his view the judge had more than adequately explained why he found the appellant not credible.

Consideration

31. It is the responsibility of an appellant (or her representative) to set out in the Notice of Appeal to the First-tier Tribunal the grounds upon which she intends to rely. See Section 19(4)(a) Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 ("the Procedure Rules"). In the Appeal Form IAFT-5 completed by the appellant's representatives it states that the appellant "must let us [the secretary of state] know the reasons you disagree with the decision on the Refusal Letter document". The Procedure Rules provide for circumstances where an appellant wishes to add to or amend grounds. See Section 19(7) of the Procedure Rules.

32. Neither Article 8 nor Article 15(c) were raised by the appellant in her grounds of appeal or in an application prior to the hearing to vary the grounds upon which she intended to rely. As neither the respondent nor the Tribunal were notified that the appellant disagreed with the decision of the respondent on these grounds (other than in a skeleton argument submitted two days before hearing), the judge did not err in finding the appellant was precluded from raising them at the hearing.

33. One of the central issues in the appeal was the appellant's credibility in respect of her claim to have received threats from her husband after he left the UK.

34. The judge gave multiple reasons why he did not accept the appellant's claim to be the victim of harassment from her husband since he left the UK. These include the following:

- a) The appellant and her partner gave inconsistent accounts of when they received threatening messages from her husband.
- b) The appellant's partner and the appellant gave inconsistent evidence both about the content of the appellant's husband's texts and whether the partner had shown her the texts he claimed to have received from the husband.
- c) The partner claimed to have first been threatened on a date that predated his relationship with the appellant.

- d) None of the social media messages alleged to have been sent by the appellant's husband were produced. The judge considered the appellant's explanation that she had deleted them all to not be credible. He also noted that she claimed to have sent one of the messages to her solicitors, but this was not produced.
 - e) The appellant claimed to have received 28 threatening viber messages from her husband where he used a false name but his own picture. The judge described it as difficult to fathom that he would use a false name but real picture. The judge commented that she gave the impression the messages were on her phone for a long time but then said she had only seen them the morning of the hearing. None were produced at the hearing.
 - f) The judge found it hard to believe the appellant's husband managed to contact her the day she changed to a new phone number in July 2015. He also thought it surprising, if her phone had been "hacked" by her husband, that she had not subsequently changed her number.
 - g) The appellant claimed her husband hacked her account so that his picture appeared on her laptop but she did not adduce any evidence to support this.
 - h) The appellant produced a single email that she sent to the police in Nepal about her situation but never followed it up. The judge found it surprising that she had not made a greater effort to notify the police in Nepal.
 - i) A letter in support from her brother and father has signatures that bear no resemblance to the signatures on their passports.
35. These are cogent and thoroughly explained reasons which show clearly why the judge concluded that the appellant had fabricated her claim to have been threatened by her husband after he left the UK.
36. The approach taken in the grounds of appeal is to set out a litany of forensic criticisms of the type that has been subjected to judicial criticism. See VW (Sri Lanka) [2013] EWCA Civ 522. The grounds, for example, criticise the judge's finding that the appellant and her husband contradicted each other and his finding about the appellant's brother and father having signatures that did not match. However, even if (which I do not accept) the judge made irrational findings or misconstrued the evidence in these particular areas, the overall conclusion of the judge is not undermined. He identified a wide range of strong reasons for finding the appellant to not be credible and there is no merit to the appellant's challenge to the credibility finding in the decision.
37. The grounds also argue that the judge erred by failing to consider the objective evidence concerning the risk faced by single divorced females in

Nepal and the issue of sufficiency of protection and internal relocation. The difficulty with this argument is that the appellant's case before the First-tier Tribunal was that she faced a risk not solely on the basis of being a single woman but on the basis of being a single woman who faced a threat from her husband and his family. If, as I have found, the judge was entitled to conclude the appellant would face no such risk, then it was not necessary to proceed to consider the objective evidence and internal relocation/sufficiency of protection. In the absence of a threat from her husband and/or his family, there would be no need for the appellant to avail herself of state protection or to relocate.

Decision

38.The appeal is dismissed

39.The judge has not made a material error of law and the decision of the First-tier Tribunal stands.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 7 July 2017